

exceedingly important health benefit to a very small number of persons who have severe speech disabilities. The Blue Cross Blue Shield Associations, which are nationwide FEHBP plan sponsors and therefore are permitted to exclude SGD, not only cover and provide SGD, but many have specific SGD coverage criteria in their commercial insurance policies. In light of SGD's importance to those who need them; their widespread acceptance and coverage as medical equipment items; and the absence of a cost basis for their exclusion, OPM has no obvious basis for approving their exclusion from nationwide FEHBP plans.

3. On February 1, 2007 and September 6, 2007, Mr. Lewis Golinker sought records pursuant to the Freedom Of Information Act ("FOIA") aimed at learning OPM's justification, if any, for approving the FEHBP's nationwide plans' exclusions of SGD coverage. OPM did not respond to his FOIA requests. Therefore, Mr. Golinker brings this action for injunctive relief to challenge OPM's failure to disclose records in response to his FOIA requests.

JURISDICTION AND VENUE

4. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) (2008) and 28 U.S.C. § 1331. Venue is proper under 28 U.S.C. § 1391(b).

PARTIES

Plaintiff

5. Mr. Lewis Golinker is an attorney with offices in Ithaca, New York. Mr. Golinker represents individuals with severe speech impairments who require SGD to communicate. He is a frequent lecturer on the subject of SGD funding at speech-language pathology and legal professional continuing education conferences and in other similar forums, and is the author of numerous articles on the subject of SGD and other assistive device funding.

He is responsible for the content posted at www.aacfundinghelp.com, and is a member of the Board of Directors of the United States Society for Augmentative and Alternative Communication.

Defendant

6. The Office of Personnel Management is an agency of the federal government with authority to contract with qualified health insurance carriers to offer plans to participants in the FEHBP.

STATUTORY BACKGROUND

Federal Employees Health Benefits Program

7. The FEHBP enables civilian employees of the federal government to purchase health insurance for themselves and their dependents. 5 U.S.C. §§ 8901-8914.

8. The OPM has statutory authority to negotiate contracts with qualified carriers, licensed to issue group health insurance, for uniform terms of one year. 5 U.S.C. §§ 8902(a), (b).

9. OPM may prescribe reasonable minimum standards for benefit plans. 5 U.S.C. § 8902(e). Each contract must contain a detailed statement of benefits offered and the maximums, limitations, exclusions, and other definitions of benefits OPM considers necessary or desirable. 5 U.S.C. § 8902(d). OPM is supposed to negotiate contracts offering maximum benefits at the lowest price. H.R. Rep. No. 957, 86th Cong., 1st Sess. 4 (1959). OPM also must assure that the rates charged for these plans reasonably and equitably reflect the cost of the benefits provided. 5 U.S.C. § 8902(i).

Freedom Of Information Act

10. The Freedom Of Information Act grants the public access to records in the custody, possession or control of the federal government. 5 U.S.C. § 552, *et seq.*

11. Once a FOIA request for records has been made, the agency receiving the request has twenty (20) days in which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i) (2008). If the agency decides not to disclose some or all documents responsive to the request, it must immediately notify the requestor of records of the reasons for the denial and of the requestor's right to appeal such a determination. Id.

12. If the agency fails to comply with the time limits enumerated in 5 U.S.C. § 552(a)(6)(A)(i) (2008), the requestor is deemed to have exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i) (2008).

13. Duplication and search fees under the FOIA are waived "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii) (2008).

FACTS

14. By letter dated February 1, 2007, Mr. Golinker directed a letter captioned "Freedom Of Information Act Request for Documents Justifying Any FEP Plan Express Exclusion of Speech Generating Devices" to Anne S. Easton, Chief, Insurance Group, Center for Employee & Family Support Policy at defendant OPM's Washington headquarters.

15. The letter requested fifteen specific categories of records each of which related to the OPM's coverage of SGDs. The letter also asked OPM to waive the fees associated with processing the request.

16. Defendant OPM did not acknowledge receipt of this request, notify Mr. Golinker that it had been forwarded to another organization, convey a notification of expected fees,

provide any documents in response to the request, or explain why it withheld the requested records.

17 On September 6, 2007, Mr. Golinker directed by fax and mail a second letter to the OPM FOIA Requester Service Center, addressed to the Associate Director for Retirement and Insurance.

18. The request was captioned "Freedom Of Information Act Request for Documents, 5 CFR § 294.107(b) Justifying Any FEP Plan Express Exclusion of Speech Generating Devices." The letter requested the same fifteen specific categories of records as the February 1, 2007 request. The letter also asked OPM to waive the fees associated with processing the request.

19. Defendant OPM did not acknowledge receipt of this request, notify Mr. Golinker that it had been forwarded to another organization, convey a notification of expected fees, provide any documents in response to the request, or explain why it withheld the requested records.

CLAIM

20. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-19 in the complaint as if fully set forth herein.

21. Defendant has violated the FOIA by failing to disclose records responsive to Plaintiff's February 1, 2007 and September 6, 2007 requests to which he is statutorily entitled. The requested data is not covered by any applicable FOIA exemption. 5 U.S.C. § 552(b)(1) (2008).

RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Declare that Defendant's failure to disclose records requested by Mr. Golinker on February 1, 2007 and September 6, 2007 is unlawful;
2. Order Defendant to disclose all records requested by Mr. Golinker in his February 1, 2007 and September 6, 2007 letters.
3. Order Defendant to waive any and all fees associated with the requests;
4. Award Plaintiff his costs and reasonable attorney's fees;
5. Award any other relief that the Court deems just and proper.

Respectfully submitted,

/s/
JEFFREY S. GUTMAN (D.C. Bar No. 416954)
The George Washington University Law School
2000 G Street, N.W.
Washington, D.C. 20052
(202) 994-7463 (phone)
(202) 994-4693 (fax)
jgutman@law.gwu.edu (e-mail)

Attorney for Plaintiff

Dated: April 30, 2008